

# **DAVIDSON COUNTY LOCAL RULES OF COURT**

June 6, 2012

Judge Thomas Brothers

## **DAVIDSON COUNTY LOCAL RULES OF COURT**

### **RULE 26. - MOTIONS IN CIVIL CASES**

#### **26.01 - Time to Schedule and Hear Dispositive Motions**

- a. Dispositive motions must be scheduled to be heard at least thirty (30) days before a trial date unless the court otherwise orders.

#### **26.02 - Time for Hearings**

- a. Motions will be heard at 9:00 a.m. on Fridays with the exception of Sixth Circuit, which hears motions at 9:30 a.m., and the Fourth Circuit, which hears motions at 9:00 a.m.
- b. Appropriate notice shall be published when a court will not have a motion docket on a Friday.
- c. Judges will endeavor to arrange their motion dockets to minimize delay for lawyers. If a lawyer is aware that an argument will be prolonged, the lawyer should attempt to set the motion specially.

#### **26.03 - Fourteen Day Minimum Notice of Hearing on Motions; Summary Judgment Motions Filed Thirty-Seven Days Before Hearing**

- a. The notice of hearing as contained in Local Rule 26.05(b) shall be filed at least fourteen (14) days before the scheduled hearing date.
- b. A motion for summary judgment cannot be heard until at least thirty-seven (37) days after it is filed unless the parties otherwise agree.
- c. In Circuit Court, the moving party needs file no further notice if the motion hearing date is continued by agreement of all parties or by court order.
- d. In Chancery Court, if a motion is reset by agreement, a written notice of the new motion hearing date must be provided the Clerk by faxed letter or otherwise. This notice must be provided by the close of business on the Monday before the Friday on which the motion is to be heard.

26.04 - Motions, Responses, Replies and Briefs

- a. Motions shall clearly state with particularity the grounds therefore, and shall set forth the relief or order sought as required by Tenn. R. Civ. P. 7.02.
- b. Every motion or response which may require the resolution of an issue of law, and every motion or response in which legal authority is relied upon, shall be accompanied by a memorandum of law and facts in support thereof. Any motion, response, brief or memorandum of law that makes reference to a transcript or deposition shall make reference to the specific page(s) of the transcript involved. Whenever a memorandum cites an unreported Tennessee decision or a decision from a court of another state or federal jurisdiction, counsel shall attach a complete copy of the opinion to the memorandum; counsel shall also furnish a copy of any such opinion to opposing counsel.
- c. When requesting leave to amend a pleading, the moving party must attach a copy of the proposed amended pleading to the motion so that it becomes part of the record.  
[Comment: Unless the record before the appellate court shows the substance of the proposed amendment, it cannot determine whether the court acted properly on the motion. *Taylor v. Nashville Banner Publ'g Co.*, 573 S.W.2d 476 (Tenn. Ct. App. 1978).]
- d. If the motion is opposed, a written response to the motion must be filed and personally served on all parties. The response shall state with particularity the grounds for opposition to the motion, supported by legal authority, if applicable. If no response is filed, the motion shall be granted with the exception of certain proceedings in Probate. (See Rule 39).
- e. Responses to motions, including counter-affidavits, depositions, briefs, briefs or any other matters presented in opposition to motions, must be filed with the clerk's office by the close of business on Monday before the Friday on which the motion is to be heard. The response must also be personally served upon all parties no later than 5:00 p.m. on the Monday before the Friday on which the motion is to be heard. If Monday falls on a holiday and the offices of the court clerks are closed, responses to motions must be filed with the clerk's office by the close of business on the Tuesday before the Friday on which the motion is to be heard. In case of a Monday holiday, service of the response on all parties must occur no later than 5:00 p.m. Tuesday.
- f. Replies to responses, if any, must be filed with the clerk's office by the close of business on the Wednesday before the Friday on which the motion is to be heard. The reply must also be personally served on all other parties no later than 5:00 p.m. on the Wednesday before the Friday on which the motion is to be heard.
- g. IF NO RESPONSE IS TIMELY FILED AND PERSONALLY SERVED, THE MOTION SHALL BE GRANTED AND COUNSEL OR PRO SE LITIGANT NEED NOT APPEAR IN COURT AT THE TIME AND DATE SCHEDULED FOR THE HEARING.

Counsel or pro se litigant shall then submit the proposed order consistent with Local Rule 33. The order shall recite that no response was timely filed or personally served. See Rule 39 for exceptions to this Rule in certain Probate matters.

26.05 - Docketing Motions for Hearing and Disposition

- a. Docketing Motions for Hearing and Disposition- Docketing of a motion will be complete upon filing the motion with the Chancery, Probate and Circuit Court Clerks, provided it contains notice of a hearing date. If no hearing date is requested upon the filing of the motion, either counsel may file a notice of hearing for a previously filed motion and serve opposing counsel and/or party.
- b. Notice of Hearing and Disposition- Any party filing a motion in Chancery, Probate or in Circuit Court shall serve written notice of the date and the time of the hearing upon all other parties. The notice shall advise all other parties that failure to file and serve a timely written response to the motion will result in the motion being granted without further hearing.
- c. Domestic relations motions are exempted from this rule and are governed by §37.05.

26.06 - Personal Service Defined

For purposes of this Rule, personal service means delivery, mailing or transmission of a facsimile (i.e., "fax" or "telecopier") such that the document served is physically received by the specified date and time. In the event personal service is affected by facsimile, an original copy of the document shall follow by delivery or mail.

26.07 - Special Setting of Motions

Where special circumstances warrant, motions may be specially set with the Calendar Clerk of each court at times other than on the regular motion docket. A motion to set an expedited hearing shall be accompanied by an attached proposed order.

26.08 - Failure to Appear at a Motion Hearing; Late Appearance

If any party does not appear at a scheduled hearing on a motion or any other matter scheduled to be heard on the motion docket, the court may strike or adjudicate the motion. Counsel who will be late for a motion hearing shall notify the Calendar Clerk of the assigned court in advance of the hearing or have an announcement to that effect made at the call of the motion docket. If the movant fails to appear, and the court strikes the motion, the court may tax, as costs, reasonable fees and expenses in favor of the opposing party who did appear at the scheduled hearing.

26.09 - Striking or Postponement of Motions

After a motion has been docketed, the movant may strike or postpone a motion upon timely notice to all parties. If a motion is to be stricken or postponed by agreement, counsel shall timely notify the Calendar Clerk of the assigned court. If any party strikes or postpones a motion without giving notice, the court may tax, as costs, reasonable fees and expenses in favor of any party who appeared at the scheduled hearing.

26.010 - Agreed Orders

If an agreed order is to be submitted disposing of a motion, counsel shall advise the Calendar Clerk of the assigned court prior to the hearing or may so announce at the hearing.

26.011 - The Hearing

- a. Oral Argument. Motions with responses shall be orally argued unless waived by agreement, excepted by order of the court, or where a prisoner proceeds pro se.
- b. No Witnesses. The motion hearing shall be upon the pleadings, affidavits or depositions unless a party requests and obtains permission of the court for the introduction of oral testimony before the time of the hearing.

26.012 - Motions in Limine

Motions in limine are governed by Local Rule 30.

26.013 - Motions to Compel Discovery

Special requirements related to motions involving discovery disputes are addressed by Local Rule 22.08-22.12.

26.014 - Class Action Determination

Within sixty (60) days after the filing of a complaint in a class action, unless this period is extended on motion for good cause appearing, the plaintiff shall move for a determination under Rule 23.03(1) Tenn. R. Civ. P. whether the case is to be maintained as a class action. In ruling upon such a motion, the Court may allow the action to be so maintained, may disallow and strike the class action allegations, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary under the circumstances. Whenever possible, where it is held that the determination shall be postponed, a date shall be fixed by the Court for the renewal of the motion.

26.015 - Default Judgement Motion with Certificate

All motions for default judgment seeking a judgment for liquidated damages shall specifically state the amount sought and be accompanied by a certificate which shall substantially comply with the default judgment certificate in the appendix. A request for non-liquidated damages will require a damages hearing.